UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD **REGION 8**

MULTI-FLOW DISPENSERS OF TOLEDO, INC. D/B/A BEVERAGE DISPENSING SYSTEMS^{1[1]}

Employer

and

Case No. 8-RC-16923

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL NO. 20

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board delegated its authority in this proceeding to the undersigned. ^{2[2]}

The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time drivers, service technicians, beer line cleaners, floaters and installers, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act^{3[3]}

Approximately 17 employees are in the unit found to be appropriate.

I. The Issue

^{1[1]} The Employer's name appears as amended at the hearing.

The Petitioner and the Employer filed post-hearing briefs which have been duly considered. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction. The labor organization involved claims to represent certain employees of the Employer. A question affecting commerce exists concerning the representation of certain employees of the Employer with the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

3[3] At the hearing, the Petitioner amended the unit it seeks to represent.

Whether the Employer's 7 route drivers should be included in the bargaining unit with the other job classifications of employees that the Petitioner seeks to represent.

II. <u>Decision Summary</u>

I find that the drivers share a sufficient community of interest with the other employees to warrant their inclusion in the bargaining unit.

III. **Positions of the Parties**

The Petitioner seeks to represent all full-time drivers, service technicians, beer line cleaners, floaters and installers. There are seven route drivers, four service technicians, two beer line cleaners, two floaters and two installers. The Union takes the position that the fact that the route drivers have some involvement in the sale of product to the Employer's customers does not negate the fact that they share a sufficient community of interest with the overall unit.

The Employer takes the position that the route drivers do not share the requisite community of interest with the other employees and should be in a separate unit.

IV. The Facts

The Employer operates a wholesale beverage and juice dispensing business located in Toledo, Ohio where it services bars, restaurants and nightclubs in Northwest Ohio and Southeast Michigan. The installers are responsible for installing the equipment needed to dispense beer, soda or liquor at the customer's place of business. The beer line cleaners flush out the lines in accordance with state regulations to keep the lines operating properly. The service technicians maintain and repair the dispensing equipment and floaters fill in as needed performing service and installation duties. The floaters also fill in for the route drivers. Installers and service technicians can also fill-in for drivers on an emergency basis.

The drivers are assigned specific geographic areas in which they deliver soft drink syrups, juice products and CO-2 gas. The Employer's General Manager, Michael Cassidy, described the truck driven by the drivers as an extended van with a 12-14 foot box on the back. All other employees drive commercial vans. Installers, service technicians, beer line cleaners and two of the route drivers take their vehicles home at the end of the day. While only drivers are required to have a Commercial Driver's License (CDL) with a Hazmat endorsement for the CO-2 gas, most of the employees (12 out of 17) have CDLs.

The drivers are responsible for maintaining customer goodwill and collecting money for product sold. They use hand-held computer devices to invoice customers and inventory stock. The drivers have no set starting or ending time for the work day. Their day is done when they have completed their route. Drivers report to the Employer's facility in the morning to load their trucks and do paperwork. The drivers have mailboxes at the facility and they transmit data via their hand-held computer devices to the Employer's headquarters in Cleveland, Ohio.

The drivers return to the facility at the end of the day. General Manager Cassidy testified that none of the employees have a set time schedule, other than a starting time. ^{4[4]} Drivers attend meetings aimed at generating sales although it is not clear how often these meetings take place.

Service technicians do not report to the facility at the start of the day. They call in for their assignment. Thomas Rembowski, a service technician, testified that in addition to performing service duties, he also delivers soft drink syrup and juice products to customers on a regular basis. Service technicians maintain a constant supply of product in their vans. When delivering product, the service technicians also collect money from customers.

Rembowski testified that he fills in for route drivers 3 to 6 times per year. Other service technicians and an installer have also filled in for route drivers. When floaters fill in for the drivers they use the same hand-held computer device that the drivers use. All employees in the proposed unit wear the same type of uniform.

Drivers also perform service technician duties for customers. Route driver Ron Deverna testified that drivers may be assigned service calls on their route, along with their delivery schedule. Deverna stated that this occurs as frequently as twice weekly to four times a month. If drivers are to perform service work on their route, they receive service call assignments along with their delivery schedule when they report to the facility at the start of the day. According to Deverna, drivers are also on call on a rotating basis to perform service work or deliver product customers. Every 6 or 7 weeks, two employees are on call to perform these duties. Along with drivers, any employee who has had service training may be assigned on-call duties. Rembowski testified that if employees are on-call over the weekend, an answering service contacts them with assignments that can include product delivery or service work.

General Manager Cassidy testified that there has been some movement among job classifications in the proposed unit. Ron Deverna, for example, began his employment as an installer and moved into a driver's position at Cassidy's request after another driver was terminated from employment. Cassidy testified that he could recall about eight to ten transfers among job classifications although he did not indicate whether they were permanent or temporary. He recalled two instances where drivers transferred out of that classification. ^{7[7]}

With regard to wages, drivers are paid a weekly base amount plus 25% commission on the sale of product. All other employees are paid on an hourly basis plus a 1-2% commission. The commission structure is the same for all employees. Drivers are eligible to receive a year end bonus if the amount of product sold exceeds the previous year's sales. The drivers may

^{4[4]} Cassidy did not indicate any specific starting time for any classification of employees.

^{5[5]} Rembowski has also worked as a warehouse employee and as a route driver (for about 6 months).

^{6[6]} One floater has worked for a year and the second floater has been employed for about 6 months. The record does not disclose with any specificity now may times in the past year a floater has filled in for a driver.

^{7[7]} Although Cassidy initially provided a confusing answer to the question of how many of his current seven drivers were hired as drivers, he later clarified that all but Deverna began in the driver classification.

also receive a \$25.00 weekly run-out bonus. Route driver Ron Deverna testified that installers earn higher wages than the drivers and the idea of the 25% commission is to give drivers an opportunity to earn wages commensurate with, at least, the installers' wages.

As General Manager, Mike Cassidy has overall responsibility for the all aspects of the daily operations of the facility. The drivers report to two area managers. The function of the area managers appears to be primarily related to assisting the drivers in maintaining customer goodwill. According to Cassidy, the area managers' role is to oversee all aspects of the driver-customer relationship. If there are any problems, the area managers become directly involved in either pricing or product issues with customers.

All other employees report directly to Cassidy. As for any personnel issues with respect to drivers, Cassidy stated that area managers may recommend disciplinary action. It is apparent from the record that the ultimate decision with regard to personnel matters, such as disciplinary action, resides with Cassidy. [8]

V. Analysis

In determining whether disputed job classifications should be included or excluded in the bargaining unit I am guided by the fundamental principal that nothing in the statute requires that a unit of employees for bargaining be the most appropriate unit, but only that it be an appropriate unit. Overnite Transportation Co., 322 NLRB 723 (1996). The Act requires only that the unit be appropriate, in order to ensure employees in each case the fullest freedom in exercising their rights guaranteed by the National Labor Relations Act. Bartlett Collins Co., 334 NLRB 484 (2001); Morand Bros. Beverage Co., 91 NLRB 409 (1950), enfd. on other grounds 190 F.2d 576 (7th Cir. 1951).

As with other disputed job classifications, when considering whether to include or exclude drivers from an overall unit, such as production and maintenance, the Board will consider whether a sufficient degree of community of interest exists among the drivers and the other job classifications. Airco, Inc., 273 NLRB 348 (1984). The Board examines such factors as mutuality of interest in wages, hours and other working conditions, common supervision, degree of skills and common functions, frequency of contact and interchange with other employees and functional integration. Ore-Ida Foods, 313 NLRB 1016 (1994). The Board has held that a plant-wide unit is presumptively appropriate and that a community of interest inherently exits among such a unit of employees. Kalamazoo Paper Box Corp., 136 NLRB 134 (1962). While not dispositive of the issue, a petitioner's position regarding the unit it wishes to represent is a relevant consideration. Marks Oxygen Co., 147 NLRB 228 (1964); Tallahassee Coca-Cola Bottling Co., 168 NLRB 1037 (1967).

Given the above standards, the burden in this case was on the Employer to establish that the interests of the drivers were so disparate from the other employees that they cannot be represented in the same unit. **E.H. Koester Bakery Co.**, 136 NLRB 1006 (1962). I find that

^{8[8]} The parties stipulated and I find that Warehouse Manager Tim Bauer is a supervisor within the meaning of Section 2(11) of the Act and therefore ineligible to vote in the election.

the presumption that this unit is appropriate has not been rebutted. I am persuaded by the significant degree of job overlap among all the employees and the degree of functional integration. On a substantial and regular basis, the drivers perform duties associated with the service technicians. Conversely, service technicians stock product in their vans and deliver products to customers. Any employees who have service training, including drivers, share on-call duties to deliver product to customers or make service calls. Installers, service technicians or floaters fill in for drivers on an emergency basis.

The fact that drivers spend time away from the facility does not serve as a point of distinction in this case. When any employee is performing their ultimate job function of servicing the customer, they are away from the facility installing equipment, cleaning lines, and repairing equipment. The employee complement is small and the job classifications are functionally integrated. Where employees fill in for drivers and drivers perform duties of other employees and there is some evidence of transfer among classifications, the Board has found a sufficient degree of community of interest existed between the drivers and other classifications of employees. <u>Cumberland Farms, Inc.</u>, 167 NLRB 593 (1967); <u>Levitz Furniture Co.</u>, 192 NLRB 61 (1971).

In determining that the drivers shared a sufficient community of interest with production and maintenance employees, the Board, in <u>Calco Painting, Inc.</u>, 242 NLRB 1364 (1979), noted that production employees filled in for drivers and had similar working conditions. In the present matter, while drivers earn a weekly rate and all other employee are paid on an hourly basis, all employee earn commission. All employees drive a company vehicle and wear the same uniform. Other than unspecified starting times, employees do not have uniform working hours.

While the drivers report to area managers, the managers' function appears to be primarily related to overseeing the relationship between the driver and the customer and to assist if any issues arise. The area managers can make recommendations regarding driver discipline, but the general manager makes the final determination. The general manager has the ultimate responsibility for the day-to-day operations.

While there are some differences in working conditions, such as the drivers earn a higher percentage of commission and are eligible for bonuses, this does not detract from the fact that the record evidence in this case establishes that the petitioned for unit is an appropriate unit.

The cases relied upon by the Employer do not establish that under the facts of the instant case, the only possible appropriate unit for the drivers is a separate unit. The Employer relies upon **Aerospace Corp.**, 331 NLRB 561 (2000) to urge that a nominal number of permanent transfers do not indicate a substantial community of interest. In that case, the union filed a petition to represent essentially an all maintenance employee unit at the employer's research and development facility. The employer argued that in a previous decision, the Board had established a per se rule that only facility wide units are appropriate in the research and development industry. The Board rejected that argument and found under the traditional analysis of community of interest, the petitioned for unit was an appropriate unit.

The number of permanent transfers among job classifications is one factor among many that are considered by the Board in weighing community of interest factors. ^{9[9]}

In conclusion, the Employer has not met its burden of proving that the interests of the drivers are so disparate from the other included classifications that they cannot be represented in the same unit. Given the significant degree of overlap in duties among the drivers and other employees, the functional integration present in this case, the lack of standard hours for all job classifications, the fact that all employees wear the same type of uniform, drive a commercial van or a modified van/route truck, and the General Manager's overall responsibility for the supervision of the employees, I find that the drivers share a sufficient community of interest to be included in the bargaining unit sought by the Petitioner.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike, who have attained their status as strikers and have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have guit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL NO. 20.

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional

Hotel Services Group, Inc., 328 NLRB 116 (1999) is inapposite because it does not deal with drivers but rather with whether a proposed unit of licensed massage therapists that excluded nail technicians, hairstylists/cosmetologists and estheticians is appropriate. Home Depot USA, Inc., 331 NLRB 1289 (2000) does concern drivers but is distinguishable on its facts because the petitioner in that case sought a unit of drivers only.

Director within 7 days from the date of this decision. North Macon Health Care Facility, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. If a party wishes to file a request for review electronically, guidance for E-Filing can be found on the National Labor Relations Board website at www.nlrb.gov. On the home page of the website, select the E-Gov tab and click on E-Filing. Then select the NLRB office for which you wish to E-File your documents. Detailed E-Filing instructions explaining how to file the documents electronically can be displayed. This request must be received by the Board in Washington, by November 21, 2007.

Dated at Cleveland, Ohio this 7th day of November, 2007.

/s/ Frederick J. Calatrello

Frederick J. Calatrello Regional Director National Labor Relations Board Region 8